

REMARKS

Independent claims 1 and 16 have been amended. Dependent claims 7-9, 13, 15, 17, 20-21, and 23-24 have been amended, and new dependent claims 27-32 have been added. Written description support for these amendments is found throughout the original specification, for example, at page 23, line 16 to page 24, line 11; at page 25, line 7 to 14; at page 26, line 9 to page 27, line 18; at page 28, line 5 to 21; and Figs. 1-3 and 5-12. No new matter has been added.

Applicants respectfully submit that pending independent claims 1 and 16, as amended, are patentable over Mayer, Mathews, and all other references cited in the record. Claims 2-9, 11-15, and 23-24 depend from claim 1 and are patentable based on the patentability of claim 1, as well as the additional inventive features they contain. Claims 17, 20-22, and 25-32 depend from claim 16 and are patentable based on the patentability of claim 16, as well as the additional inventive features they contain.

Claims 1-9, 11-17, and 20-32 are believed to be in condition for allowance in light of the amendments to the claims and prompt allowance is respectfully requested.

Request for Reconsideration

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. Applicants specifically reserve the right to pursue the subject matter of independent claims 1 and 16 (prior to amendment herein) in a continuing application.

Applicants wish to notify the Examiner of the reexamination of two co-owned patents so as to facilitate the Examiner's analysis:

Control Number
95/001,202
95/001,247

Filing Date
June 23, 2009
October 27, 2009

Attorney Docket No. 039US1
Serial No. 10759,811
Filing Date: January 16, 2004
Title: Surgical Access System and Related Methods

Page 10 of 10

It is believed that the Examiner has full on-screen access to each of the Reexam Requests, Office Actions, Third Party Comments, and other materials in each of the aforementioned cases via the Patent Office's PALM system. Courtesy copies of such Office Actions or any other materials from the aforementioned reexamination cases can be provided upon request. The Examiner is invited to contact the undersigned attorney with any questions.

Applicants hereby authorize a payment of the \$156.00 fee for excess claims to be charged to Deposit Account No.: 50-2040 for Customer No.: 30,328. No other fees are believed to be due at this time, however, in the event that there are any additional fees to be charged or payments to be credited, the Applicants hereby request that any charges or credits be made to Deposit Account No.: 50-2040 for Customer No.: 30,328. In the event that there are any questions concerning this Amendment or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,
NUVASIVE, INC.



Rory Schermerhorn, Esq.
Registration No. 58,148

Date: January 12, 2009

NuVasive, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Tel.: (858) 909-1845